LIM BOON LIN v. PENANG HAN CHIANG ASSOCIATED CHINESE SCHOOLS ASSOCIATION & ORS

HIGH COURT MALAYA, PULAU PINANG
ANAND PONNUDURAI J
[CIVIL SUIT NO: PA-22NCVC-139-08-2023]
5 APRIL 2024

Abstract – *Where proceedings in court are indeed contemplated in relation to the administration of trust, s. 9 of the Government Proceedings Act 1956 mandates that a plaintiff who is moving the court must first obtain the written consent of the Attorney General ('AG') to allow scrutiny by the AG to check against abuse and wastage of funds and other resources as public, religious, social or charitable trusts are, by their very nature and intent, set up and intended for a larger community and purpose; serving an entirely different set of beneficiaries identified by some common cause or interest. No exception appears to be made to exclude a trustee from obtaining such written consent.*

CIVIL PROCEDURE: *Striking out – Application for – Trustee of trust land sought directions from court in forms of injunctions and declaratory reliefs for administration of trust – Whether there was breach of express or constructive trust for public, religious, social or charitable purposes – Whether trustee's claims fell within ambit of s. 9 of Government Proceedings Act 1956 – Whether trustee must first obtain written consent of Attorney General – Whether trustee had locus standi to commence proceedings – Whether trustee's claims premature – Rules of Court 2012, O. 18 r. 19*

CIVIL PROCEDURE: *Action – Commencement – Charitable trusts – Trustee of trust land sought directions from court in forms of injunctions and declaratory reliefs for administration of trust – Whether there was breach of express or constructive trust for public, religious, social or charitable purposes – Whether trustee's claims fell within ambit of s. 9 of Government Proceedings Act 1956 – Whether trustee must first obtain written consent of Attorney General – Whether trustee had locus standi to commence proceedings – Whether trustee's claims premature*

TRUSTS: *Trustees – Charitable trusts – Trustee of trust land sought directions from courts in forms of injunctions and declaratory reliefs for administration of trust – Whether there was breach of express or constructive trust for public, religious, social or charitable purposes – Whether trustee's claims fell within ambit of s. 9 of Government Proceedings Act 1956 – Whether trustee must first obtain written consent of Attorney General – Whether trustee had locus standi to commence proceedings – Whether trustee's claims premature*

The plaintiff was the sole surviving trustee/effective trustee of a piece of land ('trust land') and the grandson of the late Lim Lean Teng who had purchased the trust land in 1940 in the name of the late Lim Theng Hin ('settlor'). The settlor had *vide* an indenture dated 29 July 1948 ('1948 indenture'), conveyed the trust land to himself and 13 other trustees for the express purpose of building a Chinese school to be called the 'Han Chiang School.' In furtherance of the said 1948 indenture, school buildings and facilities including dormitories were erected on the trust land. The Han Chiang School was managed by the trustees from 1952 to 1965 including through a Board of Governors. In light of the growing student population, the then trustees (which did not include the plaintiff at the material time) incorporated the first defendant, a company incorporated under the then Companies Ordinance 1940-1946, to take over the management of the Han Chiang High School from the trustees. The second defendant became the Chairman of the Board of Directors of the High School and proceeded to establish a private college for tertiary education on the trust land by appropriating the use of the classrooms, school, buildings and facilities of the Han Chiang High School without the written consent of the trustees. The HJU International College Sdn Bhd was then incorporated with the first defendant as its sole shareholder and had thereafter obtained a license from the Ministry of Higher Education to establish a private college in compliance with the conditions provided by the Ministry of Higher Education. The first and second defendants subsequently erected structures and carried out an extension of existing buildings on the trust land for the use of the private college, without seeking the consent of the then trustees or submitting plans to the local authorities in respect of such construction. Sometime in 2018, the first defendant and the third defendant, who was the current chairman of the first defendant, claimed that the private college had been elevated to the status of a university college and thus the Chancellery Block had to be erected and requested the trustees including the plaintiffs to sign the plans. This request was refused by the plaintiff due to the terms of the 1948 indenture which only allowed the establishment of a Chinese Primary and Secondary School and not a private college for tertiary education. On 17 August 2001, 15 trustees were appointed and registered on the said trust land whereby eight trustees have since passed away while six had resigned and as such, the plaintiff was currently the sole surviving trustee of the said trust. It was the plaintiff's case that sometime in 2020, the first to third defendants informed the plaintiff that they intended to construct a new Block C for the primary school. The plaintiff agreed in principle with the request that an indemnity be signed by the first defendant in favour of the trustees, which the first defendant refused to do. The first to third defendants then proceeded with the construction of Block C in 2021 which was completed in 2022. At this point, such construction of Block C was approved by the fifth defendant, a local authority established under the Town and Country Planning Act 1976

('TCPA') and empowered to grant planning permission for development projects, under KM 6289. Subsequently, the plaintiff discovered that the first to third defendants were planning to construct a four-storey building with upgrades to two existing blocks and parking facilities on the said trust land in 2023, *to wit* 'a complete and integrated education institution for the students in the northern region comprising the primary school, the Hang Chiang secondary school and the private college' ('Han Chiang Education City'). The plaintiff issued a notice to all the defendants including other related persons stating the plaintiff's objection to the said project on the grounds that the 1948 indenture only permitted the establishment of the primary and secondary schools and not the private college. The plaintiff objected to the proposed development and requested the fifth defendant to inform the plaintiff upon receipt of any plans and to forthwith reject any plans submitted. The fifth defendant informed the plaintiff that the first defendant's plan was still under consideration. The first to third defendants' application to the fifth defendant had been commonly referred to as KM 505. The plaintiff, as the sole surviving trustee and the registered proprietor of the trust land, claimed that he had the right to issue the said notice, and the first defendant had surreptitiously submitted the plans to the fifth defendant. Sometime in August 2023, the plaintiff discovered that the plans submitted by the first defendant were not signed by the plaintiff as the registered proprietor/trustee but by the second and third defendants. The plaintiff filed this present suit seeking, *inter alia*, the following reliefs: (i) an interlocutory injunction to restrain the fifth defendant from considering and/or approving the application in respect of the trust land; (ii) a declaration that the second and third defendants were not the registered owners/trustees of the said trust land and the two signatures of the second and third defendants on the application and plans submitted to the fifth defendant on behalf of the first defendant was unlawful and/or null and void; and (iii) a declaration that the purported declaration, attestation and verification of the application and plans for the project by the fourth defendant, a firm of registered architects, was unlawful and/or null and void. The defendants filed applications (encls. 16, 22 and 30) pursuant to O. 18 r. 19 of the Rules of Court 2012 ('ROC') to strike out the plaintiff's claim. The defendants contended, *inter alia*, (i) the plaintiff had not obtained the consent of the Attorney General ('AG') pursuant to s. 9 of the Government Proceedings Act 1956 ('GPA'); (ii) the plaintiff had no *locus standi* and/or capacity whether in his personal capacity or on behalf of the Board of Trustees to commence these proceedings; (iii) that the claim against the defendants was baseless and frivolous and there was no reasonable cause of action; (iv) that the plaintiff ought to be estopped from abusing court process that had the effect of restraining the fifth defendant as local authority from performing its statutory duty/function; and (v) that the case against the defendants was premature as there had yet to be any decision made by the fifth defendant.

A B C D E F G H I

Held (allowing encls. 16, 22 and 30):

(1) The plain and ordinary meaning of s. 9 of the GPA provides that in cases of any alleged breach of any express or constructive trust for public, religious, social or charitable purposes, or where the direction of the court is deemed necessary for the administration of such trust, the AG or two or more persons having an interest in the trust and having obtained the consent in writing of the AG, may institute a suit or be joined as a party in any existing suit on behalf of the Government or the public for the purpose provided in (a) to (i). (para 56)

(2) The AG only becomes involved under s. 9 of the GPA where the trust is either an express or constructive trust set up for public, religious, social or charitable purposes. From the 1948 indenture, there was no doubt that the said trust was expressly set up for the public or charitable purposes, *ie*, for schools and students. The crux of the plaintiff's complaint and claim was with respect to the construction of the university college that he contended would be in breach of the 1948 indenture. As such, the plaintiff sought directions from the court as necessary in the forms of injunctions and declaratory reliefs which it deemed necessary for the administration of the trust. Thus, where proceedings in court are indeed contemplated in relation to the administration of trust, s. 9 of the GPA mandates that a plaintiff who is moving the court must first obtain the written consent of the AG to allow scrutiny by the AG to check against abuse and wastage of funds and other resources as public, religious, social or charitable trusts are, by their very nature and intent, set up and intended for a larger community and purpose, serving an entirely different set of beneficiaries identified by some common cause or interest. Such trusts invariably would serve more than a single person. (paras 66-68)

(3) The Federal Court case of *Five Star Heritage Sdn Bhd & Ors v. Peguam Negara Malaysia & Other Appeals* enunciated that where proceedings in a court are indeed contemplated, s. 9 mandates that whoever is moving the court must first obtain the written consent of the AG. The words used by the Federal Court are 'whoever' and no exception appeared to be made to exclude a trustee from obtaining such written consent. Thus, the plaintiff as a trustee of the trust was not exempted from obtaining such written consent of the AG. The plaintiff's claim clearly fell within the ambit of s. 9 of the GPA, mandating the AG's consent prior to commencing this suit. (paras 68 & 69)

(4) The application must seek any of the reliefs set out in s. 9(1)(a) to (i) of the GPA. The purpose of initiating this suit was clearly premised on the basis that the said trust land could not be allocated for a university college as being against the purpose of the 1948 indenture as well as obtaining injunctive and other declaratory reliefs which clearly fell

within the ambit of s. 9(1)(i) and possibly (f) of the GPA. Given that s. 9(2) of the GPA provides that no suit claiming any of the reliefs specified in sub-s. (1) shall be instituted in respect of any such trust as was therein referred to except in conformity with that subsection and it used the word 'shall', the failure to comply with such requirements would affect the plaintiff's *locus* in commencing and maintaining this present suit. The plaintiff, in failing to obtain the consent of the AG prior to commencing this suit, did not have the necessary *locus standi* to commence this suit. The plaintiff's claim ought to be struck out as being unsustainable and non-maintainable. (paras 73-76)

(5) The fifth defendant is the local planning authority performing the role/function prescribed to it under the TCPA when it receives applications for planning permission submitted to it for consideration. The fifth defendant must then decide whether to refuse or grant planning permission, either absolutely or with conditions or refuse to grant planning permission. The grant or refusal of planning permission by the fifth defendant was an exercise of its discretionary powers prescribed in TCPA. The TCPA does not impose on the fifth defendant any duty and/or obligation owed to specific persons (*eg*, the applicant for planning permission, the landowner or the owners of the neighbouring lands) to exercise its discretionary powers in relation to applications for planning permission in a specific manner. As such, there was no legal basis for the plaintiff as an applicant for planning permission to contend that the fifth defendant owed him/her a duty to grant or dismiss planning permission outright because the application was made in the proper forum and contained all the necessary particulars and was accompanied by all the necessary documents, plans and fees or to the contrary. (paras 85-87)

(6) The fifth defendant was merely performing its role and function when it received the KM 505 application from the first defendant *via* the fourth defendant. They then served s. 21 of the TCPA notice to the neighbouring owners and had in response to the plaintiff's various letters informed the plaintiff that KM 505 was under consideration. The fifth defendant did not owe any duty under the TCPA to reject outright KM 505 notwithstanding that it appeared not to have been signed by the registered proprietor of the said land. The fifth defendant was merely performing its statutory duty when it received, processed or was still considering such application. How they dealt with it was entirely within its discretion. The plaintiff's claim against the fifth defendant was obviously unsustainable as the mere receiving and considering of KM 505 by the fifth defendant could not amount to a breach of its statutory duty. As no decision was made yet on KM 505, this present action was indeed premature. (paras 95-101)

(7) The plaintiff's claim was in reality requesting this court to usurp the role and powers of the fifth defendant under the TCPA which the courts should not interfere with. The plaintiff was now estopped from challenging the decision made in respect of KM 6289. Despite having knowledge of the approval of the said plans including the signatures of persons other than the plaintiff and the existing trustees and the subsequent development of Block C, the plaintiff did not commence any legal action to set aside the decision nor was there any judicial review proceedings commenced against the fifth defendant in respect of the same. (paras 102-104)

(8) The plaintiff had no valid cause of action against the fourth defendant as their role, in essence, was to produce the plans for the said project and to satisfy the procedural requirements of TCPA. Further, the approval of KM 505 fell within the purview of the fifth defendant. The final decision making in respect of the plans fell within the purview of the fifth defendant and not the fourth defendant. As such, the plaintiff's claim against the fourth defendant ought to be struck out. (para 107)

Case(s) referred to:

Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd [1995] 4 CLJ 283 FC ***(refd)***

Chin Chee Kow v. Peguam Negara Malaysia [2021] 1 CLJ 761 CA ***(refd)***

Five Star Heritage Sdn Bhd & Ors v. Peguam Negara Malaysia & Other Appeals [2024] 2 CLJ 167 FC ***(dist)***

Majlis Perbandaran Subang Jaya lwn. JAKS Resources Bhd & Satu Lagi [2016] CLJU 1734; [2016] 1 LNS 1734 HC ***(refd)***

Municipality Of Pictou v. Geldert [1893] AC 524 ***(refd)***

Pengarah Tanah Dan Galian Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] CLJU 143; [1978] 1 LNS 143 FC ***(refd)***

Prakhru Sangkarat Bau v. Wai Seng Moh & Ors [2020] CLJU 2138; [2020] 1 LNS 2138 HC ***(dist)***

Legislation referred to:

Government Proceedings Act 1956, s. 9(1)(a), (b), (c), (e), (f), (g), (h), (i), (2)
Rules of Court 2012, O. 18 r. 19(1)(a), (b), (d), O. 53
Town and Country Planning Act 1976, ss. 2, 5, 6, 21(2), (3), (6), 22, 23

For the plaintiff - Jeyasingam Balasingam & Kiranjeet Kaur Baldeep Singh; M/s Ghazi & Lim
For the 1st to 3rd defendants - Ong Yu Shin, Loh Yeow Khoon, Lim Wooi Ying & Phuah Wen Jian; M/s Wong & Loh
For the 4th defendant - David Chen Wooi Teng & Ooi Zie Yiong; M/s Phee, Chen & Ung
For the 5th defendant - Christina Siew; M/s Lim Kean Siew & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Anand Ponnudurai J:

Introduction

[1] A noble gesture and an act of philanthropy by an owner of 31 acres of land in Penang by the creation of a public charitable trust *via* an indenture in 1948 and appointment of trustees to hold the hereditaments as a site for schools and other buildings which are necessary for the establishment of a Chinese school for the purpose of education to be known as "Han Chiang School" has unfortunately led to several disputes and cases filed in court approximately 75 years later. This is one such suit. There are also several other suits pending in this court which will be referred to later in this judgment.

[2] On the matter of trustees, the said 1948 indenture stipulates that there shall be a minimum of ten trustees and a maximum of 15 trustees. The plaintiff who is the grandson of the settlor was not one of the original trustees but there have been changes over the years to the trustees by virtue of deaths, resignations and various deeds of appointments. Whilst there are suits currently pending by competing groups of individuals seeking a declaration that they are the rightful current trustees or ought to be trustees, it is not disputed that the plaintiff is a current trustee as it stands and so described on the register of title of the trust land. Out of the previous 15 trustees who are currently registered on the title, eight have since passed away and six have resigned therefore seemingly leaving the plaintiff as the sole trustee currently.

[3] On the schools and their management, due to the growing student population, the trustees at that time in 1965 incorporated the first defendant (the Penang Han Chiang Associated Chinese Schools Association – the "PHCACSA") to take over the management of the Han Chiang High School from the trustees. Importantly, art. 3 of the M & A of the first defendant provides that its object is to carry on the management of the Han Chiang High School Penang and to establish, erect and maintain any building found necessary or convenient for the purposes of the association. The second defendant was the former Chairman and the current executive advisor of the first defendant whereas the third defendant is the current Chairman of the first defendant.

[4] The plaintiff has filed this present claim against the five defendants seeking various reliefs with the core relief being sought are injunctive in nature. All the defendants have filed applications pursuant to O. 18 r. 19 ROC 2012 to strike out the plaintiff's claim namely:

(i) enclosure 16 which is the fifth defendant's application pursuant to O. 18 r. 19(1)(b) and (d) ROC 2012;

A (ii) enclosure 22 which is the first to third defendants' application pursuant to O. 18 r. 19(1)(a), (b) or (d) ROC 2012; and

(iii) enclosure 30 which is the fifth defendant's application pursuant to O. 18 r. 19(1)(a), (b) or (d) ROC 2012.

B **[5]** Whilst there are overlaps in the grounds relied on by parties, there are some that are peculiar to each defendant. I will, in this judgment however, set out firstly the facts as pleaded by the plaintiff in the statement of claim and the reliefs sought by the plaintiff. I will then set out the parties' respective contentions/submissions and thereafter my analysis of the same with a view of determining if the plaintiff's claim ought to be struck out pursuant to O. 18 r. 19 ROC 2012.

C

The Statement Of Claim

[6] Having perused the statement of claim, the plaintiff's pleaded case can be summarised as follows.

D

[7] The plaintiff is the sole surviving trustee/effective trustee of the said trust land and also the grandson of the late Lim Lean Teng who had purchased the said trust land in 1940 in the name of the late Lim Theng Hin (the settlor).

E **[8]** The first defendant is a company incorporated (under guarantee) under the then Companies Ordinance 1940-1946.

[9] The second defendant is the former Chairman and the current advisor of the first defendant whereas the third defendant is the current Chairman of the first defendant.

F

[10] The fourth defendant is a firm of registered architects.

[11] The fifth defendant is a local authority established under the Town and Country Planning Act 1976 (hereinafter referred to as "TCPA 1976") and is empowered to grant planning permission for development projects.

G **[12]** The settlor had *vide* the indenture dated 29 July 1948 conveyed the trust land to himself and 13 other trustees for the express purpose of building a Chinese school to be called the "Han Chiang School".

[13] In furtherance of the said 1948 indenture, school buildings and facilities including dormitories were erected on the trust land.

H

[14] The Han Chiang Secondary School was also completed in 1952 and the Primary School was completed in 1962.

[15] The Han Chiang High School was managed by the trustees from 1952 to 1965 including through a Board of Governors.

I

[16] In light of the growing student population, the then trustees (which did not include the plaintiff at the material time) incorporated the first defendant to take over the management of the Han Chiang High School from the trustees as reflected in arts. 3(a), (b) and (k) as well as cl. 4 of the M & A of the first defendant.

[17] In 1995, the second defendant became the Chairman of the Board of Directors of the High School, and the second defendant thereafter proceeded to establish a private college for tertiary education on the trust land by appropriating the use of the classrooms, school buildings and facilities of the Han Chiang High School without the written consent of the trustees.

[18] The HJU International College Sdn Bhd was then incorporated on 6 April 1999 with the first defendant as its sole shareholder and had thereafter obtained a license from the Ministry of Higher Education to establish a private college in compliance with the conditions provided by the Ministry of Higher Education.

[19] From the inception, the private college did not operate on the said trust land but used the classrooms, school buildings and other facilities of the high school without the written consent of the trustees.

[20] The first and second defendants subsequently erected structures and carried out an extension of existing buildings on the trust land for the use of the private college without seeking the consent of the then trustees or submitting plans to the local authorities in respect of such construction.

[21] Following the trustees' complaint to the municipal council on the unlawful construction and extension of structures on the said land, the first and second defendants commenced defamation proceedings against the trustees but it was subsequently struck out on the grounds that it disclosed no cause of action, frivolous and vexatious. The decision of the High Court was later upheld by the Court of Appeal on first December 2011 and no further appeal was filed by the first and second defendants.

[22] Sometime in 2018, the first and third defendants claimed that the private college had been elevated to the status of a university college and thus, the chancellery block had to be erected and requested the trustees including the plaintiff to sign the plans.

[23] This request was later refused *vide* their letter dated 7 May 2018 with the plaintiff contending that such refusal was due to the terms of the 1948 indenture which only allowed the establishment of a Chinese primary and secondary school and not a private college for tertiary education.

[24] On 27 February 2019, the first to third defendants herein commenced legal proceedings against the plaintiff herein and eight other trustees *vide* Originating Summons No. PA-24NCVC-98-01-2019 (hereinafter referred to as "OS 98") seeking the following reliefs:

(i) a declaration that the trust land held upon trust for the establishment of a Chinese school known as "Han Chiang School" includes and permits the establishment and operation of a private university college known as Han Chiang University College of Communication (HCUCC) on the trust land;

(ii) a mandatory injunction against the trustees to forthwith execute all relevant documents to be submitted to the relevant authorities for the erection of a chancellery block for the use of the Han Chiang University College of Communication and to perform, observe and discharge all the trustees' duties and obligations according to the indenture whenever requested by the first plaintiff (PHCACSA) within seven days from the date of the order;

(iii) Further and/or in the alternative an order to remove and discharge all the trustees and to empower and vest in the first plaintiff (PHCACSA) absolutely the right to appoint new trustees in accordance with the plaintiff's memorandum and articles of association and also the provisions of the indenture;

(iv) a vesting order to vest the powers of the existing trustees (defendants herein) to the new trustees to be appointed by the first plaintiff (PHCACSA);

(v) the Registrar or the Land Administrator do comply with this order; and

(vi) the defendants pay the costs of this application.

[25] OS 98 was subsequently struck out on 15 August 2019. Dissatisfied with the said decision, the first to third defendants appealed to the Court of Appeal *vide* Civil Appeal No. P-02(IM)(NCVC)-1643-09-2019.

[26] During the hearing at the Court of Appeal, the first to third defendants withdrew the prayers sought except for the prayer in respect of the interpretation of the word "Chinese school" in the 1948 indenture *ie*, whether it permits the setting up of a private university college on the trust land. The Court of Appeal later allowed the appeal in part and remitted OS 98 to the High Court to determine the interpretation of the word "Chinese school" and the issue of *locus standi* of the first to third defendants.

[27] Upon being remitted to the High Court, the first to third defendants later withdrew OS 98 on 6 July 2022. As such, to date there is no judicial determination on the words "Chinese school" in respect of the 1948 indenture. In fact, the plaintiff at para. 31 in the statement of claim concedes and pleads that to date there is no judicial pronouncement on the words "Chinese school" in the 1948 indenture and whether it permits the running of a private university college on trust land.

[28] The last exercise of the appointment of new trustees was on 17 August 2001 when 15 trustees were appointed and registered on the said trust land whereby eight trustees have since passed away while six have resigned, and as such, the plaintiff is currently the sole surviving trustee of the said trust. However, ten new trustees were later appointed *vide* a deed of appointment dated 30 April 2022 which was subsequently endorsed *vide* a court order obtained *ex parte* in OS PA-24NCVC-640-07-2022. (It is to be noted however, that the first to third defendants herein have since filed a new suit to set aside such *ex parte* order and registered as PA-22NCVC-185-11-2023). Similarly, there is another Suit No. PA-22 NC VC-184-11-2023 wherein the Penang Teochew Association has commenced proceedings against the plaintiff herein and ten purported trustees seeking their removal as trustees on the basis that the deed of appointment dated 30th April 2022 is void.

[29] Subsequently, *vide* a consent order dated 14 June 2023 in PA-24NCVC-1146-11-2023, the third defendant herein agreed that a private caveat lodged by one Dato Seri Ng Tee Soo and himself be removed and the *status quo* of the trust land be maintained.

[30] It is the plaintiff's case that sometime in 2020, the first to third defendants informed the plaintiff that they intended to construct a new Block C for the primary school so that there would be a unisession school which the plaintiff agreed in principle with the request that an indemnity be signed by the first defendant in favour of the trustees.

[31] However, the first defendant refused to sign the indemnity prepared by the plaintiff's solicitor. Of importance is that the two other trustees (Phe Seak Kee and Ooi Tiang Khoon) have already signed the plans for Block C.

[32] The first to third defendants then proceeded with the construction of Block C in 2021 which was completed in 2022. At this point, such construction of Block C was approved by the fifth defendant under what is commonly known as KM 6289. Upon completion of Block C, the first and second defendants commenced a civil suit against the plaintiff *vide* PA-22NCVC-158-11-2022 for damages in the sum of RM1,958,097.50 on the ground that the plaintiff had caused a delay in the completion of the said Block C by cancelling his signature on the plans. That suit is currently fixed for trial before me in June and July 2024.

[33] The plaintiff subsequently discovered that the plans for Block C were signed by Tan Sri Dato Tan Kok Ping, Dato Seri Ooi Soo Hing and Datuk Tan Hiang Joo as land and building owners.

[34] The fifth defendant as the approving authority is in breach of its statutory duty as they ought to have rejected the plans and not approved the same as the abovementioned signatories are not the registered proprietors. (However, the plaintiff has to date not taken any action against the fifth defendant or any other defendants in relation to the construction of Block C *via* KM 6289).

[35] Subsequently, the plaintiff then discovered that the first to third defendants were planning to construct a four-storey building with upgrades to two existing blocks and parking facilities on the said trust land in 2023 to wit a complete and integrated education institution for the students in the northern region comprising the primary school, the Han Chiang secondary school and the private college collectively to be eventually named as "the Han Chiang Education City".

[36] The plaintiff *vide* their solicitor's letter dated 31 October 2022 issued a notice to all the defendants including other related persons stating the plaintiff's objection to the said project on the grounds that the 1948 indenture only permits the establishment of the primary and the secondary school and not the private college.

[37] The first to third defendants *vide* their solicitors replied that the primary, secondary and the private college are the beneficiaries under the 1948 indenture and the Han Chiang Education City project is within the ambit of the indenture.

[38] Notwithstanding the plaintiff's letter dated 31 October 2022, the first defendant proceeded to submit the plans for the said project in June 2023 as reported in the Chinese Daily on 20 July 2023.

[39] The plaintiff once again objected to the proposed development *vide* their letter dated 30 June 2023 and requested the fifth defendant to inform the plaintiff upon receipt of any plans and to forthwith reject any plans submitted.

[40] The plaintiff *vide* their solicitor's letter dated 13 July 2023 had requested the fifth defendant for the plans submitted by the first defendant but received no response.

[41] *Vide* the fifth defendant's letter dated 18 July 2023, the fifth defendant informed the plaintiff that the first defendant's plan was still under consideration. The first to third defendants' application to the fifth defendant has been commonly referred to as "Kebenaran Merancang 505" or KM 505.

[42] The first and second defendants *vide* their solicitor's letter dated 17 July 2023 in reply to the plaintiff's letter dated 30 June 2023 stated that the plaintiff had no *locus standi* to issue the notice dated 30 June 2023 and the first defendant had the right to submit the plans for the said project as the issue of trusteeship had yet to be determined by the court.

[43] The plaintiff *vide* their solicitor's letter dated 24 July 2023 replied that the plaintiff as the sole surviving trustee and the registered proprietor of the trust land had the right to issue the said notice dated 30 June 2023, and the first defendant had surreptitiously submitted the plans to the fifth defendant.

The plaintiff had also emphasised their consistent objection to the said project and requested the first to third defendants not to proceed with the groundbreaking ceremony.

[44] The first and second defendants, *vide* their solicitor's letter dated 27 July 2023, denied the contents of the plaintiff's letter dated 24 July 2023.

[45] The plaintiff *vide* their solicitor's letter dated 31 July 2023 to the fifth defendant, and its legal department informed that the press had on 20 July 2023 reported that the first defendant had submitted the development blueprint and building plans for the said project to the fifth defendant and that the ground breaking ceremony would be held on 5 August 2023, notwithstanding that the fifth defendant had informed the plaintiff on 18 July 2023 that the plans were still under consideration.

[46] Sometime in early August 2023, the plaintiff discovered that the plans submitted by the first defendant were not signed by the plaintiff as the registered proprietor/trustee but by the second and third defendants as "pemilik tanah dan pemohon."

[47] The plaintiff then filed this present suit seeking the following reliefs:

(i) an interlocutory injunction to restrain the fifth defendant (Majlis Bandaraya Pulau Pinang) from considering and/or approving the application under 'Kebenaran Merancang MBPP/ILCS-OSC/PM 505/2023 (the plans)' in respect of the land known as Lot 2756, Section 6, Bandar Georgetown, Daerah Timur Laut, Negeri Pulau Pinang held under Hakmilik Geran (1st Grade) 5741 (formerly known as Lot 234, Section 6, Daerah Timur Laut, Negeri Pulau Pinang) (and described in the plans as part of Lot 3402 (old Lot 2756) ("the trust land") in the plans submitted by the fourth defendant on behalf of the first defendant pending final disposal of the main suit or such order by this Honourable Court herein;

(ii) an interlocutory injunction to restrain the fifth defendant (Majlis Bandaraya Pulau Pinang) from considering and/or approving plans other than the plan under 'No. Permohonan Kebenaran Merancang MBPP/ILCS-OSC/PM 505/2023' ('the plans') as stated in prayer 1 above in respect of the trust land;

(iii) an injunction to restrain the first, second, and third defendants by themselves or by their agents or servants or otherwise howsoever from submitting further application(s) or plan(s) apart from the plan as stated above in prayer 1 in respect of the trust land;

(iv) a declaration that the second and third defendants are not the registered owners/trustees of the said trust land and the two signatures of the second and third defendants on the application and plans

submitted to the fifth defendant by the fourth defendant on behalf of the first defendant under 'No. Permohonan Kebenaran Merancang MBPP/ILCS-OSC/PM 505/2023' ('the plans') as stated in Prayer 1 above in respect of the trust land is unlawful and/or null and void;

(v) a declaration that the fourth defendant's architect, Ar. Mei Chee Seong's purported declaration, attestation and verification of the application and plans for the project to the submission *vide* 'No. Permohonan Kebenaran Merancang MBPP/ILCS-OSC/PM 505/2023' ('the plans') is unlawful and/or null and void;

(vi) an injunction to restrain the fourth defendant by themselves or by their agents or servants or otherwise howsoever from submitting further application(s) or plan(s) on behalf of the first defendant apart from the plan as stated above in Prayer 1 in respect of the trust land;

(vii) general damages against the first defendant and/or the second defendant and/or the third defendant and/or the fifth defendant;

(viii) exemplary /punitive damages against the defendants;

(ix) interest; and

(x) costs.

[48] Having set out the above, I will now set out the parties' respective contentions/submissions on encls. 16, 22 and 30 as can be gleaned from their various affidavits filed as well as their written submissions.

Parties' Respective Contentions/Submissions

The First To Third Defendants' Contentions/Submissions

[49] The first to third defendants' contentions/submissions in respect of their application in encl. 22 are summarised as follows:

(i) that the plaintiff has not obtained the consent of the AG pursuant to s. 9 of the Government Proceedings Act 1956 (hereinafter referred to as "GPA 1956");

(ii) that the plaintiff has no *locus standi* and/or capacity whether in his personal capacity or on behalf of the Board of Trustees to commence these present proceedings;

(iii) that the plaintiff lacks the *locus standi* when the 1948 indenture expressly provides that the maximum number of 15 trustees and a minimum of ten trustees and the plaintiff has no interest *in personam*',

(iv) that the claim against the defendants is baseless and frivolous and there is no reasonable cause of action;

(v) that the plaintiff ought to be estopped from abusing the court process that has the effect of restraining the fifth defendant as local authority from performing its statutory duty/function provided under the TCPA 1976;

(vi) that the present case against the defendants is premature as there has yet to be any decision made by the fifth defendant till to date;

(vii) that there is an inordinate delay of ten months in filing this present suit; and

(viii) that there is no declaration nor determination on the term "school" in the 1948 indenture.

The Fourth Defendant's Contentions/Submissions

[50] The fourth defendant's contentions/submissions in respect of their application in encl. 30 are summarised as follows:

(i) that the plaintiff has not obtained the consent of the AG pursuant to s. 9 of the GPA 1956;

(ii) that the plaintiff failed to raise any cause of action against the fourth defendant as the present case involves the determination of the application by the fifth defendant. The fourth defendant's role was only an architect appointed by the first defendant to produce the plans for the said project;

(iii) that the accusations and allegations against the fourth defendant are void and baseless and a misconception of the plaintiff as it is not the duty of the fourth defendant to determine the validity of the signatures of the second and third defendants;

(iv) that it is not the requirement of the TCPA 1976 that the registered proprietor sign and/or submit the plans to the fifth defendant;

(v) that the present case against the fourth defendant is premature as there has yet to be any decision made by the fifth defendant till to date; and

(vi) that there is an inordinate delay of ten months in filing this present suit since the date of the knowledge of the said project by the plaintiff since 31 October 2022.

The Fifth Defendant's Contentions/Submissions

[51] The fifth defendant's contentions/submissions in respect of their application in encl. 16 are summarised as follows:

(i) that the plaintiff is estopped from challenging the validity of the approval dated 17 February 2021 and/or the decision of the fifth defendant in allowing KM 6289 in relation to the previous construction of Block C;

(ii) that the fifth defendant is merely exercising its statutory duties when accepting and processing KM 505 from the first defendant;

(iii) that the majority of the allegations/pleaded case as seen in the statement of claim is in respect of the disputes between the plaintiff and the first to third defendants relating to the interpretation of the terms in the indenture dated 29 July 1948 which is of no relevance nor does it involve the fifth defendant;

(iv) that the allegations of the plaintiff against the fifth defendant are limited to (a) the approval given to develop Block C of the Han Chiang Primary School as seen at paras. 46 to 49 of the statement of claim (KM 6289); and (b) the issue involving the application made by the first to fourth defendants for the development of "Han Chiang Education City" as seen at paras. 71 to 77 of the statement of claim (KM 505);

(v) as admitted by the plaintiff at para. 7 of the statement of claim, the fifth defendant is the local authority which has the statutory obligations and/or duty pursuant to the TCPA 1976 to receive, process and decide on the application;

(vi) that the fifth defendant denies the allegation of breach of statutory duty in approving KM 6289, as it has never received any complaints from the plaintiff nor any trustees in respect of the same;

(vii) that no action was taken to set aside KM 6289 and/or to challenge the decision of the fifth defendant in approving KM 6289;

(viii) that there is no relief sought by the plaintiff against the fifth defendant in respect of KM 6289 and if the plaintiff intends to do so, the right recourse is to commence judicial review proceedings against the decision of the fifth defendant pursuant to O. 53 of the Rules of Court 2012;

(ix) that KM 505 was signed by the second and third defendants as "pemilik tanah dan pemohon" and the first defendant was named as "tuan punya tanah" and that KM 505 has yet to be decided by the fifth defendant as stated in the letter dated 18 July 2023 and thus, there is no basis for a claim against the fifth defendant;

(x) that the fifth defendant has no statutory obligation towards the plaintiff to inform him about the submission of the plans by the first defendant, the signature of the first defendant as the registered proprietor, the approval to commence site clearing works and/or to furnish the plaintiff with the plan submitted by the first defendant;

(xi) that it is at the discretion of the fifth defendant as to the receipt and process of the plans and it has no obligation towards the plaintiff in this respect;

(xii) that there are no provisions in the TCPA 1976 in respect of the need to obtain the consent of the fifth defendant for the groundbreaking ceremony;

(xiii) that the interlocutory injunction reliefs sought at para. 78 of the statement of claim are in essence a permanent injunction against the fifth defendant;

(xiv) that the plaintiff's claim is premature in that the fifth defendant must be allowed to decide KM 505. Once such a decision is made, if the application is approved, the plaintiff's recourse would be to commence judicial review proceedings; and

(xv) that the claim is frivolous, vexatious and an abuse of the court process.

The Plaintiff's Contentions/Submissions

[52] In opposing the applications, the plaintiff submits that his claim ought not to be struck out but ought to proceed to trial for the following reasons:

(i) that the plaintiff as the registered trustee does not need the consent of the Attorney General pursuant to s. 9 of the GPA 1956;

(ii) that the plaintiff as the sole trustee has the requisite *locus standi*;

(iii) that there are disputed facts in this matter;

(iv) that there is a good cause of action mainly based on the allegation that the building plans submitted for KM 505 by the first to fourth defendants have breached s. 21 of the TCPA 1976 for failure to obtain his consent;

(v) that the plaintiff's claim is not premature but based on a genuine apprehension; and

(vi) that there has been no inordinate delay in pursuing this claim.

[53] Having set out the respective contentions of all parties above, rather than go through them individually, I will take them as separate broad grounds/headings. However, in my view, the issue of the consent of the Attorney General is critical and the determination of this issue alone may determine the fate of the plaintiff's suit and as such, I would deal with this issue first.

A **Analysis**

Section 9 Of The Government Proceedings Act 1956

[54] As highlighted earlier, the first to third defendants as well as the fourth defendant contend that the plaintiff has no *locus standi* to commence these B proceedings pursuant to the failure of the plaintiff to obtain the Attorney General's consent pursuant to s. 9 of the GPA 1956.

[55] Section 9 of the GPA 1956 reads as follows:

9. Public, religious, social or charitable trusts.

C (1) In the case of any alleged breach of any express or constructive trust for public, religious, social or charitable purposes, or where the direction of the court is deemed necessary for the administration of any such trust, the Attorney General or two or more persons having an interest in the trust and having obtained the consent in writing of the Attorney General, may institute a suit or be joined as a party D in any existing suit on behalf of the Government or the public for the purpose of:

(a) asserting any interest or right in the trust property;

(b) removing any trustee;

E (c) appointing a new trustee;

(d) vesting any property in a trustee;

(e) directing accounts and inquiries;

(f) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust; F

(g) authorizing the whole or any part of the trust property to be let, sold, mortgaged, charged or exchanged;

**(h) settling a scheme; and

(i) obtaining such further or other relief as the nature of the case G may require.

(2) No suit claiming any of the reliefs specified in subsection (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with that subsection.

H (3) Subject to subsections (1) and (2), all suits and proceedings in any court relating to any such trust as is therein referred to or otherwise in which the Government is interested, or in which the interests of the public are affected, or in which if brought in England the Attorney General of England would be, or would be made, a necessary party as plaintiff or defendant, whether by himself or by relation of parties, shall be brought and had in the name of the I Attorney General as plaintiff or defendant; and the Attorney

General shall have and exercise therein the same rights, duties and powers as the Attorney General of England would have and exercise in England in similar cases so far as the circumstances of Malaysia admit.

*(4) The powers of the Attorney General under this section shall, in respect of any trust on the concurrent list, be exercisable by the State Attorney General.

[56] In my view, the plain and ordinary meaning of **s. 9 of the GPA 1956** provides that in cases of any alleged breach of any express or constructive trust for public, religious, social or charitable purposes, or where the direction of the Court is deemed necessary for the administration of any such trust, the Attorney General **or two or more persons having an interest in the trust** and having **obtained the consent in writing of the Attorney General,** may **institute a suit** or be joined as a party in any existing suit on behalf of the Government or the public for the purpose provided in (a) to (i). (emphasis added).

[57] In this case, there is no dispute that the trust *via* the 1948 indenture is an express trust for public and/or charitable purposes *ie*, for education. There is also no dispute that the AG's consent was not obtained by the plaintiff either prior to the filing of this present suit or to date. There is also no dispute that the plaintiff has filed this suit on his own and described himself in the intitulement as the sole surviving effective trustee for the trust land.

[58] Having perused the statement of claim, it is clear that the crux of the plaintiff's complaint is that by applying for permission and attempting to construct a building to house a university college, there is a breach of the terms of the 1948 indenture by the first to third defendants. Further, the plaintiff's claim is premised on his understanding that the trust was specifically for the purpose of "Chinese school" and that there is therefore an alleged breach of the terms of the 1948 indenture as the proposed university college does not fall within the ambit of "school" as provided in the 1948 indenture. It is further contended that the second and third defendants are not trustees nor registered proprietors and therefore, should not have signed the plans for KM 505. The plaintiff's claim against the fourth defendant is that they have breached their duty as an architect in submitting the KM 505 plans whereas the claim against the fifth defendant is for an alleged breach of their statutory duties in previously approving KM 6289 as well as accepting the plans from the first defendant for KM 505 and considering the same. There is no dispute that KM 505 has yet to be decided to date. In fact, upon this application by the plaintiff for an interim injunction, parties had agreed on the 15 September 2023 that the matters will remain *status quo* pending the disposal of encl. 5 *ie*, the fifth defendant will not make a final determination of KM 505 plans pending the disposal of encl. 5.

[59] Whilst the defendants contend that the AG's consent is required, the plaintiff on the contrary contends that he does not require the AG's consent. The plaintiff mainly contends that s. 9 of the GPA 1956 does not state that a trustee needs the consent of the AG and relies on several decided Indian cases to support his contention.

[60] The plaintiff further contends that the wording of s. 9 of the GPA 1956 *ie*, "two or more persons having an interest in the trust" who are required to apply for the AG's consent to institute a suit or be joined as a party in any existing suit "on behalf of the Government or the public" clearly does not apply to the plaintiff as trustee and only applies to other "busybodies".

[61] The plaintiff finally submits that as a registered trustee of a public charitable trust, the plaintiff does not require the consent of the AG as the plaintiff being the registered trustee has the capacity and *locus standi* to act for the trust including to apply to the court for any orders or directions relating to the trust land.

[62] With due respect, I am unable to accede to the plaintiff's contention for various reasons. In my view, one has to consider the purpose and rationale of requiring the AG's consent pursuant to s. 9 of the GPA 1956 and in this respect, in my opinion, whether the intended plaintiff is a trustee or not is irrelevant. If the plaintiff's contention is correct, then trustees of a public charitable trust will essentially be able to file all sorts of suits willy-nilly without the AG's consent and this is certainly not the intended or desired position. With respect, I find the plaintiff's reliance on the decided Indian cases to be not helpful and those cases can be distinguished as correctly pointed out by learned counsel for the first to third defendants. Similarly, the plaintiff's reliance on the High Court decision in *Prakhru Sangkarat Bau v. Wai Seng Moh & Ors* [2020] CLJU 2138; [2020] 1 LNS 2138; [2020] MLJU 1200 is of no assistance as in that case, all the undisputed trustees were seeking possession of trust land which had been trespassed and therefore the High Court correctly held that the AG's consent was not required as it did not involve an issue pertaining to the administration of the trust.

[63] The plaintiff in an attempt to persuade me to decide that consent was not required referred me to the broad grounds of the Court of Appeal in *CIMB Bank Bhd v. Suppiah S Govindasamy & Ors* which was decided on 21 September 2023 (prior to the Federal Court decision in *Five Star Heritage Sdn Bhd & Ors v. Peguam Negara Malaysia & Other Appeals* [2024] 2 CLJ 167 dated 5 December 2023). However, I note that the broad grounds of the Court of Appeal do not delve into nor discuss the application of s. 9 of the GPA 1956 in cases involving trustees save for para. 42 of the broad grounds which is of no assistance to this present case as that case dealt with the issue of a charge action with the answer being that the AG's consent is not required before a charge is entered. This case before me is entirely different involving

a claim by the plaintiff who is attempting to assert his rights as the main trustee and is questioning the way the trust has been managed *ie*, construction of buildings on the trust land for purposes not envisaged by the trust.

[64] The first to fourth defendants on the other hand rely extensively on a recent Federal Court decision of *Five Star Heritage Sdn Bhd & Ors v. Peguam Negara Malaysia & Other Appeals* [2024] 2 CLJ 167 which provides a detailed analysis as to the need to obtain the consent of the AG pursuant to s. 9 of the GPA 1956.

[65] The Federal Court in the case of *Five Star Heritage Sdn Bhd* (*supra*) enunciated as follows:

> [30] We agree with those principles and the approach. Sections 9(1) and (2) provide in quite clear terms how and when the AG becomes involved in such trusts, and what requirements must be met before matters relating to such trusts may be challenged in Court. First, it is in the nature of trust itself. The AG only becomes involved under s. 9 where the trust is either an express or constructive trust set up for public, religious, social or charitable purposes. Next, there must be an allegation of breach of such a trust; or the direction of the Court is deemed necessary for the administration of such trust. In simple terms, Court action is contemplated.
>
> [31] Where proceedings in Court are indeed contemplated, s. 9 mandates that whoever is moving the Court must first obtain the written consent of the AG. We can appreciate the rationale for such a requirement. As explained in the above case authorities, the process allows scrutiny by the AG to check against abuse and wastage of funds and other resources. Public, religious, social or charitable trusts are, by their very nature and intent, set up and intended for a larger community and purpose; serving an entirely different set of beneficiaries identified by some common cause or interest. Such trusts invariably would serve more than a single person.
>
> [32] So, where there is an allegation of breach or where direction of the Court is necessary for the administration of such trust, and some suit or proceeding is contemplated, it makes good sense that the written consent of the AG is first procured. And, according to s. 9(1), that written consent must be sought by two or more persons. Again, this makes good sense, appreciating the nature and character of such trusts. More than one disgruntled person or complainant must step forward to make that complaint and, secure the prior written consent of the AG.
>
> [33] The next requirement is that the application must seek any of the reliefs set out in s. 9(1)(a) to (i).

[66] Applying the abovementioned case to the present facts, it is apt that one has to first determine the nature of the trust itself. Clearly, the AG only becomes involved under s. 9 of the GPA 1956 where the trust is either an express or constructive trust set up for public, religious, social or charitable

purposes. From the 1948 indenture, there is no doubt that the said trust was expressly set up for the public or charitable purposes *ie*, for schools and students.

[67] The next consideration is that there must be an allegation of breach of such a trust or the direction of the court is deemed necessary for the administration of such trust. In simple terms, court action is contemplated. In this case, the crux of the plaintiff's complaint and claim is with respect to the construction of the university college that he contends would be in breach of the 1948 indenture. As such, in these circumstances, the plaintiff seeks directions from the court as necessary in the forms of injunctions and declaratory reliefs which it deems necessary for the administration of the trust.

[68] Thus, in my view, where proceedings in court are indeed contemplated in relation to the administration of trust, s. 9 of the GPA 1956 mandates that a plaintiff/s who are moving the court must first obtain the written consent of the AG to allow scrutiny by the AG to check against abuse and wastage of funds and other resources as public, religious, social, or charitable trusts are, by their very nature and intent, set up and intended for a larger community and purpose; serving an entirely different set of beneficiaries identified by some common cause or interest. Such trusts invariably would serve more than a single person. More importantly, Her Ladyship Justice Mary Lim at para. 31 of the Federal Court case of *Five Star Heritage* (*supra*) has also enunciated that where proceedings in court are indeed contemplated, s. 9 mandates that whoever is moving the court must first obtain the written consent of the AG. The words used by the Federal Court are "whoever" and no exception appears to be made to exclude a trustee from obtaining such written consent. Thus, quite clearly, the plaintiff as a trustee of the trust is not exempted from obtaining such written consent of the AG.

[69] As such, in my view, the plaintiff's claim clearly falls within the ambit of s. 9 GPA 1956 mandating the AG's consent prior to commencing this suit. In fact, no explanation whatsoever was proffered for his failure to obtain such consent.

[70] Further, I note that in the *Five Star Heritage Sdn Bhd* (*supra*), reference was made by the Federal Court to the Court of Appeal case of *Chin Chee Kow v. Peguam Negara Malaysia* [2021] 1 CLJ 761; [2021] 5 MLJ 303. Although that case dealt with a judicial review application challenging the decision of the Minister in refusing to give consent to an association, such consent by the Minister was withheld on the basis that the AG had previously given consent to those he considered to be the proper existing trustees. Whilst the case herein does not deal with the issue of the exercise of the AG's discretion, the decision fortifies my view that even trustees would require the consent of the AG if all prerequisites of s. 9 of the GPA 1956 are in play.

[71] Further, according to s. 9 of the GPA 1956, written consent must be sought by two or more persons having an interest in the trust. Again, this makes good sense, appreciating the nature and character of such trusts. More than one disgruntled person or complainant having an interest in the trust must step forward to make that complaint and secure the prior written consent of the AG. On the facts of the case, the plaintiff commenced this present suit as sole trustee. It is critical to mention here that the plaintiff had previously in OS 640 obtained a court order pursuant to a deed of appointment dated 30 April 2022 whereby ten additional trustees were appointed as trustees pursuant to the 1948 indenture. However, none of the other ten trustees appear to support the plaintiff's position although I do note that the parties had agreed by consent to stay the effect of the said court order granted in OS 640 and that the names of the additional ten trustees will not be registered on the title until the disposal of applications to set aside the *ex parte* order made in OS 640.

[72] In respect of the court's order in OS 640, as highlighted earlier, there are now two further proceedings pending which will determine who are the rightful trustees. In Suit 185, the first to third defendants herein have commenced proceedings as plaintiffs there seeking *inter alia* an order to set aside the earlier order in OS 640 appointing ten new trustees and removing the plaintiff herein as trustee. The Penang Teochew Association have also filed Suit 184 against the plaintiff herein and the ten purported trustees to set aside the court order in OS 640, to remove the plaintiff herein as trustee and providing a further list of 14 names to be appointed as trustees. Whilst these two suits are currently being managed by the High Court, of critical importance to note is that both those suits have been instituted with the express consent of the AG pursuant to s. 9 of the GPA 1956.

[73] Further, the next requirement is that the application must seek any of the reliefs set out in s. 9(1)(a) to (i) of the GPA 1956. Having perused the statement of claim, in my view, the purpose of initiating this suit is clearly premised on the basis that the said trust land cannot be allocated for a university college as being against the purpose of the 1948 indenture as well as obtaining injunctive and other declaratory reliefs which in my view clearly falls within the ambit of s. 9(1)(i) and possibly (f) of the GPA 1965.

[74] In my opinion, given that s. 9(2) of the GPA 1956 provides that no suit claiming any of the reliefs specified in sub-s. (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with that subsection and it uses the word "shall", the failure to comply with such requirements will affect the plaintiff's *locus* in commencing and maintaining this present suit.

[75] In conclusion, having considered the facts and the surrounding circumstances of this case and in light of the abovementioned cases in particular the Federal Court case of *Five Star Heritage Sdn Bhd* (*supra*), I am of the considered view that the plaintiff in failing to obtain the consent of the AG prior to commencing this suit does not have the necessary *locus standi* to commence this suit. I further find that the claim and the nature of the reliefs sought clearly fall within the ambit of s. 9 of the GPA 1956 and I cannot agree with the plaintiff's contention that the mere fact that he is a trustee negates the need for him to obtain the written consent of the AG.

[76] As such, I am impelled to the conclusion that the plaintiff's claim ought to be struck out as being unsustainable and non-maintainable for this reason alone. However, for the sake of completion, I will proceed to consider some other issues raised by the parties in particular the issue of whether or not the plaintiff's claim is premature.

[77] In passing, it is to be noted that the crux of the complaint by the plaintiff is that the construction for the said project (Han Chiang Education City) *vide* KM 505 is contrary to the intent of the settlor *via* the 1948 indenture in that the intent was only for Chinese schools which this was not. The first to third defendants take a different view. However, as for now, as admitted by the plaintiff himself, there is yet to be any judicial pronouncement on this issue. The plaintiff in this suit has also not sought any declaration on this issue and as such, I will not venture into this topic or provide my views as to the correctness or otherwise of either party's contentions.

Whether The Plaintiff's Claim Is Premature?

[78] The plaintiff's claim against the fifth defendant is premised on a breach of its statutory duties provided under s. 21(2) of the TCPA 1976 arising from the approval of the previous plan KM 6289 and the failure to reject outright KM 505 submitted by the first defendant.

[79] However, the fifth defendant in their submission contends that the plaintiff's claim is premature as the fifth defendant has yet to make any decision on KM 505.

[80] At the outset, there is no dispute that the second and third defendants did in fact sign the KM 505 application which they had done based on a resolution by the first defendant's Board of Directors as follows:

An Extract of Resolution passed at the meeting of the Board of Directors' duly convened and held on December 17, 2022

APPOINTMENT OF AUTHORISED SIGNATORY FOR DEVELOPMENT PLAN FOR THE CONSTURCTION OF CAMPUS OF HAN CHIANG UNIVERSITY COLLEGE OF COMMUNICATION

The meeting resolved that company has decided to authorize, Tan Sri Dato' Seri Tan Kok Ping JP (NRIC: 461117-71-5053) and Dato' Seri Ooi Soo Hing (NRIC: 510913-07-5235) and are hereby authorized to sign and submit all the relevant and necessary drawing plans, forms, letters, agreements, etc for development plan for the construction of campus of Han Chiang University College of Communication to be submitted by the company in connection with the company.

Tandatangan Pemilik Tanah dan Pemohon:

Saya mengesahkan :-

a) *bahawa hakmilik tanah bagi tanah di mana bangunan-bangunan ini akan dibina tidak mengandungi perjanjian atau syarat-syarat khas yang melarang pemunyaan bangunan-bangunan yang tersebut.

~~b) bahawa Pemunya-Pemunya telah mematuhi sepenuhnya dengan syarat-syarat kehendak di dalam perjanjian-perjanjian tersebut itu, dan syarat-syarat tanah yang di dalam hakmilik.~~

PENANG HAN CHIANG ASSOCIATED CHINESE SCHOOLS ASSOCIATION
NAMA : TAN SRI DATO SERI TAN KOK PING JP
NO. K.P. : 461117-71-5053
ALAMAT : PENANG HAN CHIANG ASSOCIATED CHINESE SCHOOLS ASSOCIATION, JALAN HAN CHIANG, 11600 PULAU PINANG.

PENANG HAN CHIANG ASSOCIATED CHINESE SCHOOLS ASSOCIATION
NAMA : DATO' SERI OOI SOO HING
NO. K.P. : 510913-07-5235
ALAMAT : PENANG HAN CHIANG ASSOCIATED CHINESE SCHOOLS ASSOCIATION, JALAN HAN CHIANG, 11600 PULAU PINANG.

[81] The plaintiff's main complaint is that the second and third defendants appear to have signed as owners of the trust land. However, having perused the above, it is clear that the second and third defendants signed the same on behalf of the first defendant. They never signed it as registered proprietors or declared themselves as registered owners. As seen, their signing of the KM 505 application was a result of a resolution passed by the Board of Directors of the first defendant on 17 December 2022 which expressly authorised them to sign and submit the application for the construction of the Han Chiang University College on behalf of the first defendant.

[82] In this regard, it has to be borne in mind that the first defendant is the corporate body that carries on the management of the Han Chiang High School Penang and establishes, erects and maintains any building found necessary or convenient for the purposes of the association. Also, the defendants have highlighted the various provisions of s. 21 of the TCPA 1976 and submit that an application need not only be restricted to a registered proprietor and that the fifth defendant has the discretion in this regard.

[83] In my view, it is critical to consider the role and function of the fifth defendant *vis-a-vis* the planning application pursuant to the TCPA 1976 when considering the defendants' submission that the plaintiff's claim is premature.

[84] In considering the role and function of the fifth defendant, the same can be gleaned from ss. 5, 6, 21 and 22 of the TCPA 1976.

[85] The fifth defendant, as the local planning authority for the island of Penang, performs the role/function prescribed to it under the TCPA 1976 when it receives applications for planning permission submitted to it for consideration. The fifth defendant must then decide whether or refuse to grant planning permission, either absolutely or with conditions or refuse to grant planning permission. The grant or refusal of planning permission by the fifth defendant is an exercise of its discretionary powers prescribed in TCPA 1976. Of course, such exercise of its discretionary power is not unfettered and is subject to challenge by way of internal appeal procedures or judicial review proceedings.

[86] As pointed out correctly by the fifth defendant at paras. 5.2 and 5.3 of their submission, the TCPA 1976 does not impose on the fifth defendant any duty and/or obligation owed to specific persons (*eg*, the applicant for planning permission, the landowner or the owners of the neighbouring lands) to exercise its discretionary powers in relation to applications for planning permission in a specific manner.

[87] As such, there is no legal basis for the plaintiff as an applicant for planning permission to contend that the fifth defendant owes him/her a duty to grant or dismiss planning permission outright because the application is made in the proper form and contains all the necessary particulars and is

accompanied by all the necessary documents, plans and fees or to the contrary. Likewise, there is no legal basis for a neighbouring landowner to contend that the fifth defendant owes him/her a duty to refuse planning permission merely on account of objections made by him/her under s. 21(6) of the TCPA 1976.

[88] The plaintiff contends that the KM 505 application is invalid because the plan accompanying the KM 505 application was not signed by him as landowner but instead signed by the second and third defendants. To this end, the plaintiff relies on the provisions under s. 21(2) of the TCPA 1976, read altogether with the definition of "owner" in s. 2 of the TCPA 1976.

[89] Premised on the contention that the KM 505 application is invalid, the plaintiff alleges that the fifth defendant as the local planning authority "is in breach of its statutory duties as stated in the Town and Country Planning Act" by *inter alia* the following acts/omission:

(i) the fifth defendant did not inform the plaintiff that the signature on the KM 505 application was not the plaintiff's signature as the registered owner of the land;

(ii) the fifth defendant allowed the first defendant to submit the KM 505 application, issued notices to the owners of the neighbouring lands pertaining to the KM 505 application and informed the plaintiff that the KM 505 application is under consideration instead of outright rejecting the KM 505 application;

(iii) the fifth defendant allowed the first defendant to carry out site clearing works and did not inform the plaintiff of the same; and

(iv) the fifth defendant failed to provide a copy of the KM 505 application at the request of the plaintiff as the registered proprietor of the land.

[90] In essence, the plaintiff's pleaded cause of action against MBPP is for misfeasance and/or nonfeasance in public office.

[91] The Privy Council in the case of *Municipality Of Pictou v. Geldert* [1893] AC 524 held that in order to sustain an action for misfeasance or nonfeasance in public office, a plaintiff must show that the statute under which the defendant public authority acts expressly imposes on that public authority a duty towards himself/herself. A discretionary power conferred upon the public authority, even if wrongfully and/or negligently exercised, is insufficient to impose a duty or obligation on that public authority, the breach of which would make them liable to members of the public or to specific persons.

[92] In this regard, I will briefly deal with the allegations by the plaintiff against the fifth defendant.

Duty To Inform Plaintiff Of Submission Of KM 505 Application

[93] There are no provisions in the TCPA 1976 which impose a duty on the fifth defendant as the local planning authority to inform a landowner that the signature on an application for planning permission as well as on the plans accompanying the application, purporting to be that of the land owner's, is not his/hers.

Receiving, Processing And Deciding On KM 505 Application

[94] As highlighted above, the fifth defendant's function/role *vis-a-vis* planning permissions under the provisions of the TCPA 1976 is to:

(i) receive applications for planning permission submitted to them as the local planning authority for the island of Penang;

(ii) process applications for planning permission, which includes giving directions deemed necessary for purposes of planning as prescribed under s. 21(3) of the TCPA 1976 and serving notice to the owners of the neighbouring lands of their right to object to the application as prescribed under s. 21(6) of the TCPA 1976; and

(iii) make a decision on applications for planning permission *ie*, to grant planning permission, either absolutely or with conditions, or to refuse planning permission.

[95] In my view, the fifth defendant was merely performing its role and function when it received the KM 505 application from the first defendant *via* the fourth defendant. They then served s. 21 of the TCPA 1976 notice to the neighbouring owners and had in response to the plaintiff's various letters informed the plaintiff that KM 505 "masih dalam pertimbangan Majlis dan tiada keputusan diberikan setakat hari ini".

[96] In my further view, contrary to the plaintiff's contention, the fifth defendant does not owe any duty under the TCPA 1976 to reject outright KM 505 notwithstanding that it appears not to have been signed by the registered proprietor of the said land. In my view, the fifth defendant is merely performing its statutory duty when it received, processed or is still considering such application. How they deal with it is entirely within its discretion and it bears repeating that no decisions have been made to date as to whether to grant or reject such application.

[97] In the case of *Majlis Perbandaran Subang Jaya lwn. JAKS Resources Bhd & Satu Lagi* [2016] CLJU 1734; [2016] 1 LNS 1734, an application for planning permission was submitted to MPSJ in respect of a proposed development on the first respondent's land and partly on the land of various third parties for which the third parties' consent was not obtained nor endorsed on the said application. Such application was accepted and

processed under s. 21 of the TCPA 1976 with the ultimate decision that the planning permission was refused. Such a decision was challenged by the internal appeal procedure and subsequently by judicial review. In my view, similarly here, the fifth defendant should be allowed to consider and decide on the said application and the plaintiff would be at liberty to file judicial review proceedings in the event KM 505 is approved by the fifth defendant.

[98] As such, I am constrained to conclude that the plaintiff's claim against the fifth defendant is obviously unsustainable as the mere receiving and considering of KM 505 by the fifth defendant cannot amount to a breach of its statutory duty. I therefore find merit in the defendants' submissions that the claim herein is indeed premature.

[99] Further, the plaintiff himself has pleaded in the statement of claim that based on the fact that the previous plan for Block C of the primary school (KM 2689) was approved several years earlier by the fifth defendant by people who are not landowners, he has a genuine apprehension that there is a real likelihood that KM 505 will also be approved.

[100] However, notwithstanding any such apprehension, be it genuine or otherwise, in my opinion, the fifth defendant is now tasked with the statutory duty to decide whether or not to approve KM 505. If it does not approve KM 505, then that should be the end of the matter. However, if it is approved, the plaintiff has other options of either appealing to the appeals Board pursuant to s. 23 of the TCPA 1976 or to commence judicial review proceedings at that stage. As such, I find that there is nothing within the TCPA 1976 to compel the fifth defendant to reject an application at the outset and that they must be allowed to carry out their functions and to decide whether or not to approve KM 505.

[101] Bearing in mind that there is no decision made yet on KM 505, I agree with the contentions of the defendants that this present action is indeed premature. In my view, KM 505 should take its natural course and the fifth defendant should be allowed to decide on this application one way or another. I cannot agree with the plaintiff's position that these proceedings are not premature on the basis that the fifth defendant has wrongfully accepted and currently processing KM 505.

[102] In addition, in my view, the plaintiff's claim herein is in reality requesting this court to usurp the role and powers of the fifth defendant under the TCPA 1976 which decided cases have cautioned that the courts should not interfere with. See the case of *Pengarah Tanah Dan Galian Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] CLJU 143; [1978] 1 LNS 143; [1979] 1 MLJ 135.

[103] Similarly, the plaintiff in his statement of claim pleads that the fifth defendant in granting/approving the plans KM 6289 has therefore breached its statutory duties.

[104] However, as correctly pointed out by the fifth defendant, the plaintiff is now estopped from challenging the decision made in respect of KM 6289. Despite having knowledge of the approval of the said plans including the signatures of persons other than the plaintiff and the existing trustees and the subsequent development of Block C, the plaintiff did not commence any legal action to set aside the said decision nor was there any judicial review proceedings commenced against the fifth defendant in respect of the same. As such, the plaintiff is estopped from challenging the decision of approving KM 6289. See the case of *Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd* [1995] 4 CLJ 283; [1995] 3 MLJ 331.

Claim Against The Fourth Defendant

[105] The plaintiff's claim against the fourth defendant is for breach of their professional duties and rules of etiquette when their registered architect Ar Mei Chee Seong declared that he had witnessed the signatures of the landowners.

[106] The fourth defendant submits that there is no valid cause of action against the fourth defendant as the fourth defendant's role is only an architect appointed by the first defendant to produce a plan for the said project and to satisfy the procedural requirements under the TCPA 1976.

[107] In my view, having perused the statement of claim, I am of the considered view that the plaintiff has no valid cause of action against the fourth defendant as their role, in essence, was to produce the plans for the said project and to satisfy the procedural requirements of TCPA 1976. Further, the approval of KM 505 falls within the purview of the fifth defendant. The final decision-making in respect of the plans falls within the purview of the fifth defendant and not the fourth defendant. As such, the plaintiff's claim against the fourth defendant ought to be struck out.

Conclusion

[108] In the upshot, I would allow encls. 16, 22 and 30 with costs of RM6,000 to be paid by the plaintiff to the first to third defendants and the fifth defendant respectively and RM4,000 to be paid by the plaintiff to the fifth defendant subject to allocator.